



**Written Testimony of Michelle Demmert,  
Alaska Native Women's Resource Center Policy Director  
for the U.S. Senate Committee on Indian Affairs Legislative Hearing on  
the Urgent Need to Reauthorize the Violence Against Women Act  
December 8, 2021**

My name is Michelle Demmert, and I am an enrolled citizen and the former Chief Justice of Central Council Tlingit and Haida Indian Tribes of Alaska's Supreme Court (Tlingit & Haida) and serve as the Law and Policy Director for the Alaska Native Women's Resource Center (AKNWRC).

The Alaska Native Women's Resource Center is a nonprofit organization dedicated to ending violence against women in partnership with Alaska's 229 tribes and allied organizations.

My nation, Tlingit & Haida, is a federally recognized tribal government with over 33,000 citizens worldwide, and has an active, government-to-government relationship with the United States. The Tribe serves 18 villages and communities spread over 43,000 square miles within Southeast Alaska. More than 7,000 tribal citizens reside in Juneau, with several thousand more located in Anchorage. Beyond that, a significant number of tribal citizens reside in Washington State (more than 6,000), and smaller numbers stretch into Oregon and the rest of the world. Tlingit & Haida tribal citizens are among the largest, most isolated, and most geographically dispersed tribal populations nationwide. In Southeast Alaska, where the Tribe provides the majority of its services, most communities have no roads in or out and must rely on planes and boats for both day-to-day needs and emergencies. The majority of Alaska's 229 tribes are similarly isolated.

The AKNWRC is a member of the National Congress of American Indians' Task Force on Violence Against Women. Since its establishment in 2003, the NCAI Task Force, which I co-chaired from 2017-2020, has assisted Indian tribes in advocating for national legislative and policy reforms to strengthen tribal government authority and access increased resources to safeguard the lives of American Indian and Alaska Native women.

Thank you for inviting me to testify on behalf of the AKNWRC on the essential role of the Violence Against Women Act (VAWA) in supporting Alaska Native victims of domestic and sexual violence and strengthening the response of Indian tribes in Alaska to these crimes in villages across Alaska.

The challenges confronting Alaska Indian tribes in creating safe villages for our citizens, specifically women, are distinct from any other sovereign in the United States—Indian tribes, States, Territories, or the federal government. In this testimony, I will provide a brief explanation of how systemic barriers within the state of Alaska undermine safety for Alaska Natives and exacerbate an already dire situation for many Alaska Native women. I will also discuss how the tribal provisions in VAWA 2013 have left Alaska Natives further behind. Finally, I will address how the Violence Against Women Reauthorization Act, H.R. 1620 and recommended reforms included in the Alaska Tribal Public Safety Empowerment Act introduced last session, S. 2616, present a path forward that begin to address the unique challenges in Alaska and will ultimately bring greater safety to Alaska Native women.

### **Systemic Legal Barriers Confronting Alaska Indian Tribes**

The 2013 Indian Law and Order Commission (ILOC) issued the Report, “A Roadmap for Making Native America Safer” and devoted a chapter to the unique issues in Alaska.<sup>1</sup> The Report found that the absence of an effective justice system has disproportionately harmed Alaska Native women who are continually targeted for all forms of violence.

An instructive statement contained in the ILOC report concludes:

“The strongly centralized law enforcement and justice systems of the State of Alaska . . . do not serve local and Native communities adequately, if at all. The Commission believes that devolving authority to Alaska Native communities is essential for addressing local crime. Their governments are best positioned to effectively arrest, prosecute, and punish, and they should have the authority to do so—or to work out voluntary agreements with each other, and with local governments and the State on mutually beneficial terms.”

—Indian Law and Order Commission Report, 2013

We are encouraged that Congress is considering legislation that recognizes that restoring safety for Alaska Native women requires empowering Alaska Native tribal governments. This is consistent with recommendations that have been made for decades to remove barriers in federal law that limit the authority of tribal justice systems to address violence in tribal communities. Unfortunately, Congressional efforts over the last 10 years to empower tribal governments—including VAWA 2013 and the Tribal Law & Order Act of 2010—have left Alaska tribes behind. Alaska tribes are treated differently under U.S. law largely because of the timing of Alaska statehood and the unique structure of the Alaska Native Claims Settlement Act.

The Alaska Territory was purchased by the United States from Russia in 1867. Three short years later, Congress prohibited the President from “treating” with tribal governments.<sup>2</sup> As a result,

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<sup>1</sup>*A Roadmap for Making Native America Safer: Report to the President and Congress of the United States* (November 2013), available at <http://www.aisc.ucla.edu/iloc/report/>.

<sup>2</sup> 25 U.S.C. §71. During this time, it is notable that the Civil War had just ended, and the country was in the process of the “Reconstruction Era,” a time which the United States was reintegrating into the Union the states that had seceded and determining the legal status of African Americans. Alaska Territory was a far-off world not part of this focus.

there are no treaties with tribes in Alaska. Instead, between 1891-1936 reserves in Alaska were established by Executive Order, or in the case of the Annette Islands reserve, by act of Congress.

Alaska was a territory for almost a century before becoming a state during a time known as the Termination Era of federal Indian policy (mid-1940s to mid-1960s).<sup>3</sup> The Termination Era was a period of policymaking focused on ending federal obligations to Indian tribes with the ultimate aim of dissolving tribal governance structures and lands and fully assimilating Native people into the dominant culture. The policy has been widely repudiated, but many of today's challenges are the direct result of Termination Era actions that have never been undone. Public Law 83-280 (1953) (PL 280) was enacted during the Termination Era and transferred to certain states federal criminal jurisdiction over Indians living on tribal lands. Before PL 280 was enacted, the federal and tribal governments shared jurisdiction, exclusive of the states, over almost all civil and criminal matters involving Indians on tribal lands. A month after Alaska became a state in 1958,<sup>4</sup> the provisions of PL 280 were extended to Alaska as a "mandatory" state.

At the time of statehood, Alaska had several "Executive Order" Reservations and Native townsites, which were set aside for the benefit and use of "Indians" or "Eskimos." The Alaska Natives were active in advancing their rights and engaged in governance with the Alaska Native Brotherhood (1912) and the Alaska Native Sisterhood (1915). Through their efforts, the first civil rights act in the country was adopted while Alaska was still a Territory.<sup>5</sup> In the 1960s, land rights became a primary issue in Alaska. With the discovery of oil, the federal government wanted to end any question of land status for Natives and gain access to the rich oil reserves.

The Alaska Native Claims Settlement Act (ANCSA)<sup>6</sup> came at the tail end of the Termination Era. ANCSA created a new and novel approach to tribal land tenure. Rather than recognize sovereign tribal lands, ANCSA created for-profit corporations and transferred tribal lands in fee to these entities to manage more than 40 million acres of land. ANCSA divided the state into 12 regional corporations and over 200 village corporations that would identify with their regional corporation. Many of these villages had corresponding tribal village governments but, with the passage of ANCSA, no meaningful or recognized land base. After ANCSA, the only remaining Alaska reservation is the Annette Island Reserve in Southeast Alaska.<sup>7</sup>

Following the enactment of ANCSA, several decades of confusion about the status and territorial authority of Alaska tribal governments ensued. Ultimately, the tribal status of Alaska Natives was confirmed, but the jurisdiction of the tribes was severely limited by *Alaska v. Native Village*

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<sup>3</sup> 68 Stat. 795; Pub. L. 85-615, § 1, Aug. 8, 1958,

<sup>4</sup> Public Law 85-508 (July 7, 1958). The statehood act was signed into law by the President on July 7, 1958. On January 3, 1959, the President signed the official proclamation admitting Alaska as the 49th state.

<sup>5</sup> House Bill 14, the Antidiscrimination Act of 1945.

<sup>6</sup> 43 U.S.C. 1601 et. seq. (1971).

<sup>7</sup> 18 U.S.C. § 1162 (Except as otherwise provided in sections 1154 and 1156 of this title,; 28 U.S.C. § 1360. Pursuant to ANCSA, two Native corporations were established for the Neets' aii Gwich'in, one in Venetie, and one in Arctic Village. In 1973, those corporations elected to make use of a provision in ANCSA allowing Native corporations to take title to former reservation lands set aside for Indians prior to 1971, in return for forgoing the statute's monetary payments and transfers of non-reservation land. See §1618(b). The United States conveyed fee simple title to the land constituting the former Venetie Reservation to the two corporations as tenants in common; thereafter, the corporations transferred title to the land to the Native Village of Venetie Tribal Government (the Tribe). However, the analysis of their land status is beyond the scope of this discussion.

of *Venetie Tribal Government*, 522 U.S. 520 (1998), a case in which the U.S. Supreme Court held that the lands transferred by ANCSA do not meet the definition of “Indian country” under federal law. As a practical matter, this decision has meant that with the exception of the Annette Island Reservation, there is virtually no recognized “Indian country” in Alaska.<sup>8</sup>

As a term in federal law, “Indian country” defines a confined area of territorial jurisdiction tied to a tribe. The term “Indian country” means:

“(a) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.”<sup>9</sup>

Most federal programs and statutes reference eligibility of “Indian country” for certain programs. While federal programs have expanded their definitions for Alaska Native tribes to take advantage of most programs as “dependent Indian communities,” the lack of true legally defined “Indian country” and corresponding defined jurisdiction, continues to create a dangerous situation in Alaska and for tribal governments to protect their women and children.

In addition, without lands recognized as “Indian country,” Alaska tribes have very little ability to tax or engage in economic development opportunities that may be available to tribes outside Alaska. Alaska tribes have also been deprived of consistent and predictable tribal court federal appropriations. As a result, Alaska tribes lack the revenue typically available to other tribal governments to fund and sustain essential government infrastructure and services such as a court or police force. All Alaska tribes are in a similar position and must find innovative ways to raise government revenue and to leverage other resources to sustain their tribal courts, public safety, and victim services. Because of this resource dilemma, available grants for developing and sustaining programs are a matter of life or death for Alaska Native women and tribes.

The combined impact of PL 280 and the *Venetie* decision leave Alaska Natives dependent on the state of Alaska for public safety and justice. Alaska tribal communities are at the mercy of the state to provide justice services. Unfortunately, state services are centered in a handful of Alaskan urban areas, making them more theoretical than real in rural Alaska. The Indian Law and Order Commission found that “Alaska Department of Public Safety (ADPS) officers have primary responsibility for law enforcement in rural Alaska, but ADPS provides for only 1.0-1.4 field officers per million acres.”<sup>10</sup> Without a meaningful law enforcement presence, crime regularly occurs with impunity. In addition, the maze of jurisdictional issues, the remote nature of many tribal communities, and other systemic barriers in Alaska create extremely dangerous

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<sup>8</sup> The *Venetie* decision did not address whether other lands in Alaska, including Indian allotments and Native townsites, are “Indian country.”

<sup>9</sup> 18 U.S.C. § 1151.

<sup>10</sup> A Roadmap for Making Native America Safer: Report to the President and Congress of the United States (November 2013), available at <http://www.aisc.ucla.edu/iloc/report/>.

conditions for Alaska Native women across the entire state, and especially those living in our small, remote resource-poor communities. Without the extension of state services and resources to address the disparities in rural tribal communities, the State of Alaska has failed Alaska Native women, children, and families.

It is nearly impossible to convey this situation and the traumatic hardships constantly faced by Alaska Native women and families to people, lawmakers, and leaders who have not visited rural Alaska. They cannot envision a place in America where you cannot call 911 and have a response within minutes. But in Alaska, we do not have a centralized 911 system-- if we need services, we have to determine who to call—do we need emergency medical help or law enforcement services? We often do not have a police presence in the Village and rely on state troopers stationed many air miles away. We might have to leave a message and wait hours, days, and sadly weeks for a necessary response. Sometimes the response is nothing more than a phone call saying that it doesn't rise to the level warranting an investigation. The message we receive repeatedly is that the state justice system devalues us as Native women. In a highly publicized case, Justin Scott Schneider, an Anchorage man, violently attacked a Native woman. Schneider was charged with kidnapping, strangling the victim until she became unconscious then masturbating on her. This man pled guilty and yet served no jail time.<sup>11</sup> Why would we trust such a system to help us?

Again, the current crisis and spectrum of violence committed against Alaska Native women is a result of systemic barriers created through historic laws and policies of federal Indian law. Alaska Indian tribes lack and desperately need access to both tribal and state justice services. Many tribes have no advocacy services, law enforcement, no 911, no state official they could conceive of raising a complaint to, given the separation of geography, language, and culture. The jurisdictional barriers in Alaska create extremely dangerous conditions for our small, remote communities. The dire and life-threatening circumstance can be overcome through legislative reforms and adequate funding of Indian tribes in Alaska to respond to violence against women. We have beautiful communities, cultures and people that deserve the resources that all other communities have available.

### **The Spectrum of Violence Against Alaska Native Women**

The rates of violence experienced by Alaska Natives are horrific. Alaska often ranks as the most dangerous place in the nation for women.<sup>12</sup> This is particularly true for Alaska Native women.<sup>13</sup> The ILOC found that Alaska Native women are overrepresented and have the highest rates of victimization for any population of women by 250%. While Alaska Natives comprise approximately 19% of the state population, according to a 2017 report from the Alaska Criminal

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<sup>11</sup> <https://www.cnn.com/2018/09/21/us/alaska-assault-man-no-sentence/index.html> While this crime occurred in an urban area, this sentence shows how access to justice fails our tribal people.

<sup>12</sup> See, e.g., "Missing or murdered? In America's deadliest state, one family is still searching for answers," USA Today, June 25, 2019, available at <https://www.usatoday.com/in-depth/news/nation/2019/06/25/deadliest-state-women-alaska-rape-and-murder-too-common-domestic-violence-rape-murder-me-too-men/1500893001/>.

<sup>13</sup> "Alaska Native Women Suffer the Highest Sexual Assault Rates in the Country," The Crime Report, Feb. 2, 2021, available at <https://thecrimereport.org/2021/02/05/alaska-native-women-suffer-highest-sexual-assault-rates-in-the-country/>

Justice Commission, 46% of reported felony level sex offenses involved Alaska Natives.<sup>14</sup> Among other Indian Tribes, Alaska Native women suffer the highest rates of domestic and sexual violence in the country.<sup>15</sup>

The outrage and anguish of the Native families who have lost loved ones to violence—whose mothers, daughters, sisters, and aunties have disappeared or been murdered—has recently propelled a conversation about missing and murdered indigenous women to the national level. But these deaths, these missing women, are the devastating manifestation of centuries of oppression and broken systems that have failed to protect Native women and children from birth to death for generations. Alaska has the highest number of missing Indigenous persons. As of August 2021, out of the 743 missing Alaska Native and American Indian people in the National Missing and Unidentified Persons System (NamUs), 292 of those were from Alaska.<sup>16</sup> Alaska is considered one of the most violent states, with Anchorage as one of the most violent cities.<sup>17</sup>

Domestic violence and sexual assault survivors in Alaska Native villages are often left without any means to seek help and justice for the crimes against them because many villages lack advocacy services and law enforcement. When law enforcement finally arrives, sometimes the evidence is stale, or the chain of custody can no longer meet applicable legal standards, and the case cannot be prosecuted. In addition, tribal victims of domestic violence may need to leave their home village to seek safety for themselves and their children.

We have 229 federally recognized tribes and nearly 40% lack full time law enforcement, so when a crime occurs, we have to wait hours, sometimes days and in extreme weather situations, weeks. We also lack the necessary authority and infrastructure to manage these issues on our own. As a result, with the challenges of travel during extreme weather, our children are often our first responders, and our tribal leaders and advocates act as law enforcement and preserve crime scenes. In many communities, women self-organize to provide informal safe houses for women in danger from domestic violence. When state law enforcement does appear, there is such distrust of them, and the investigations are often done poorly by these state officials and can take years to see a result, if ever. Some examples:

- In a homicide case, it took 11 hours for law enforcement to appear. The body of the 13-year-old victim laid outside across the street from the family home. Sometimes these crime scenes are like this for days on end. We have lost our loved ones and are powerless to do anything more than protect a crime scene until law enforcement arrives.
- Another example is a rape that occurred more than 5 years ago. The rape kit was finally tested, and a perpetrator was found. This is extraordinary— the vast majority of rape victims have no access to a forensic exam— and could be seen as a success story. But the delays in testing the rape kit meant that the small community lived in fear for years

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<sup>14</sup> Alaska Criminal Justice Commission, “Sex Offenses: A Report to the Alaska State Legislature,” April 5, 2019, pg. 10.

<sup>15</sup> A Roadmap for Making Native America Safer: Report to the President and Congress of the United States at 41 (November 2013), available at <http://www.aisc.ucla.edu/iloc/report/>.

<sup>16</sup> [https://namus.nij.ojp.gov/sites/g/files/xyckuh336/files/media/document/namus-stats-ai\\_an-report-august-2021.pdf](https://namus.nij.ojp.gov/sites/g/files/xyckuh336/files/media/document/namus-stats-ai_an-report-august-2021.pdf)

<sup>17</sup>When Men Murder Women 4 (Violence Policy Center 2019).Missing and Murdered Indigenous Women and Girls 12. The Seattle-based Urban Indian Health Institute reports that Alaska is among the top ten states with the highest number of missing and murdered AI/AN.(Seattle Urban Indian Health Institute 2018).

knowing that there was a rapist among them. Now that a perpetrator was charged, more than five years later, the victim/survivor who had worked to move on and rebuild her life is now asked to endure the trial that she had thought would never happen.

- In a 2018 case in a small remote interior village, a victim waited 17 days to get out of the village to safety. During this time, the victim was treated at the clinic and called law enforcement (Alaska State Troopers) located in a hub community one hour away by plane. The weather was unflyable for 3 weeks and the victim could not get a charter plane to pick her up so she could go to a neighboring village to visit relatives. In addition, she could not get to a regional medical clinic for further treatment, and law enforcement could not get into the community for an investigative report. There was no safe home or safe housing available and so she waited, afraid that her partner would find out that she was trying to leave. Whether a tribe has advocacy services or public safety personnel makes a difference if victims have support and someone to call for help.
- For more than 6 hours the Village of Kake was in lockdown mode because of an active shooter incident until law enforcement arrived and took the person into custody.
- A 14-year-old girl was raped by a young man in a village without law enforcement. Everyone in the girl's family (and village), especially the child, was scared and had to wait several months for the troopers to make an arrest. In the meantime, the alleged rapist lived two doors down from her home. Eventually, there was an arrest, but it was unknown if there was ever a prosecution.

None of these communities had law enforcement within their communities.

Studies such as the National Institute of Justice, *Research Report on the Violence Against American Indian and Native Women and Men*, document the dire safety circumstances confronting Native victims of domestic and sexual violence. Nationally, 38% of Native victims are unable to receive necessary services compared to 15% of non-Hispanic white female victims.<sup>18</sup> Given the remote location of many Alaska Native communities, this disparity is certainly even more pronounced in Alaska. The young woman described above waited in fear for more than two weeks to get to safety. The circumstances described above are repeated in variation ad nauseam throughout remote Alaska. These are the daily harms perpetuated by the exclusion of tribes in Alaska from exercising special domestic violence criminal jurisdiction.

### **The Exclusion of Indian Tribes in Alaska from Exercising Special Domestic Violence Criminal Jurisdiction**

Many tribes, since the passage of VAWA 2013, have successfully exercised jurisdiction over non-Indians who abuse Native women. Unfortunately, when VAWA was reauthorized in 2013, Indian tribes in Alaska were effectively excluded and denied the life-saving benefits of exercising Special Domestic Violence Criminal Jurisdiction (SDVCJ). We have called on Congress to remove the legal barriers denying Alaska Native victims of violence access to justice from their own tribal governments, and we are encouraged by current efforts to do so.

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<sup>18</sup> Rosay, André B., "Violence Against American Indian and Alaska Native Women and Men," *NIJ Journal* 277 (2016): 38-45, available at <http://nij.gov/journals/277/Pages/violence-against-american-indians-alaska-natives.aspx>.

I had the privilege of working with many of the tribes exercising SDVCJ as part of the Inter-tribal Working Group on Special Domestic Violence Criminal Jurisdiction established by the U.S. Department of Justice. These tribes have held serial offenders accountable and have brought justice and safety to hundreds of victims and their families. They have done so while upholding the due process rights of all defendants in tribal courts. Unfortunately, the same access to safety and justice is denied to Alaska Native victims of domestic violence because section 904 of VAWA 2013 limits the restored exercise of the special domestic violence criminal jurisdiction to tribes to certain crimes committed in "Indian country."

Yet, while the federal law continues to tie the hands of Alaska tribal governments, the State does not have the resources to provide the level of justice needed in tribal communities. And ultimately, the State is not the local, tribal authority. From a 2016 NIJ report, we learned that American Indian and Alaska Native women are 3 times more likely to experience sexual violence by an interracial perpetrator than non-Hispanic White-only females.<sup>19</sup> Alaska Indian tribes need to be able to exercise special domestic violence criminal jurisdiction to address these staggering statistics by providing protection for the lives of their women, children, and families.

### **Proposed Amendments of H.R. 1620 and the Alaska Safety Empowerment Act**

We are pleased to see and support the proposed tribal amendments for Alaska Indian tribes included in the House, Violence Against Women Reauthorization Act, H.R. 1620, and the previously introduced Alaska Tribal Public Safety Empowerment Act and urge the Senate to introduce a companion or similar bill to reauthorize VAWA.

H.R. 1620 begins to address the jurisdictional challenges and dire circumstances facing Alaska Native women. It recognizes a tribe's territorial jurisdiction equivalent to the corresponding village corporation's land base and traditional territory. Alaska's own Representative Don Young voted in favor of H.R. 1620's expanded jurisdictional definition of the pilot project to include "all lands within any Alaska Native village with a population that is at least 75 percent Alaska Native." In addition, removing the requirement of "Indian country" to enforce a protection order would assist Alaska Tribal villages and strengthen their efforts to enforce protection order violations without confusion

We understand that the jurisdictional situation in Alaska is complex, and we support the creation of a Pilot Project in Alaska so that more than just 1 of the 229 federally recognized tribes can exercise Special Criminal Jurisdiction (SCJ). The pilot project could be conducted similarly to the implementation of SDVCJ after the passage of VAWA 2013. We recommend:

- 1) the creation, with DOJ support, of an Alaska specific Intertribal SDVCJ Working Group;
- 2) a planning phase with robust technical assistance to assist with code drafting, training, and court capacity building; and
- 3) appropriate financial support for costs related to both planning and implementation.

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<sup>19</sup> *Id.* at 18.



Until the unique legal framework in Alaska is addressed, Alaska Tribes, except Metlakatla, are largely left without inclusion in this important legislation that recognizes the inherent authority of a tribe to prosecute violent crimes against women. Authority alone, however, will not solve the problem. While federal funding for tribal justice systems nationally has never been close to what is needed to provide a base level of services, it has been virtually non-existent in Alaska. Alaska Native villages need resources to develop their criminal justice infrastructure.

### **Limitations of VAWA 2013 Special Domestic Violence Criminal Jurisdiction**

I would also like to address the need for amendments to VAWA 2013's SDVCJ provisions more generally. Despite the successes of special domestic violence criminal jurisdiction, there are gaps in the law. Under VAWA 2013, tribal prosecutors are unable to charge defendants for crimes related to abuse or endangerment of a child; for sexual assault, stalking or trafficking committed by a stranger or acquaintance; or for crimes that a defendant might commit within the criminal justice system like assault of an officer, resisting arrest, obstruction of justice, or perjury.

The tribes prosecuting non-Indians report that children are involved in their cases as victims and witnesses over 60% of the time. These children deserve justice. A 2016 study from the National Institute for Justice (NIJ), found that approximately 56% of Native women experience sexual violence within their lifetime, with 1 in 7 experiencing it in the past year.<sup>20</sup> Nearly 1 in 2 report being stalked.<sup>21</sup>

Unlike the general population where rape, sexual assault, and intimate partner violence are usually intra-racial, Native women are more likely to be raped or assaulted by someone of a different race. NIJ found that 96% of Native women and 89% of male victims reported being victimized by a non-Indian.<sup>22</sup> Native victims of sexual violence are three times as likely to have experienced sexual violence by an interracial perpetrator as non-Hispanic White victims.<sup>23</sup> Similarly, Native stalking victims are nearly 4 times as likely to be stalked by someone of a different race, with 89% of female stalking victims and 90% of male stalking victims reporting inter-racial victimization.<sup>24</sup>

Provisions contained in H.R. 1620 would amend 25 U.S.C. 1304 to include sexual assault, stalking, and trafficking crimes committed in Indian Country. It would untie the hands of tribal governments and allow them to extend the same protections to victims of sexual violence and stalking as are available to domestic violence victims. All victims of sexual violence, child abuse, stalking, trafficking, and assaults against law enforcement officers deserve the same protections that Congress afforded to domestic violence victims in VAWA 2013, including victims in Alaska Native villages.

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<sup>20</sup> Andre B. Rosay, Nat'l Inst. of Justice, *Violence Against American Indian and Alaska Native Women and Men: 2010 Findings from the National Intimate Partner and Sexual Violence Survey*, U.S. Dep't of Justice 11 (2016), available at <https://www.ncjrs.gov/pdffiles1/nij/249736.pdf>.

<sup>21</sup> *Id.*, at 29.

<sup>22</sup> *Id.*, at 18.

<sup>23</sup> *Id.*, at 29.

<sup>24</sup> *Id.*, at 32.

The United States has a federal Indian trust responsibility to the first people of the United States. In several cases discussing the trust responsibility, the Supreme Court has used language suggesting that it entails legal duties, moral obligations, and the fulfillment of understandings and expectations that have arisen over the entire course of the relationship between the United States and the federally recognized tribes. Indian tribes in Alaska have a desperate need for the reforms included in H.R. 1620 to address the continued legacy of the spectrum of violence committed against Alaska Native women since the U.S. asserted authority over our Nations.

We strongly support the amendments to VAWA 2013 that recognize:

- Native children and law enforcement personnel involved in domestic violence incidents on tribal lands are equally in need of the protections that were extended to adult domestic violence victims in VAWA 2013;
- the need to close another loophole in the SDVCJ provision of VAWA 2013 to ensure that Tribes have authority to prosecute sexual assault, sex trafficking, and stalking crimes; and
- most significantly to Alaska Native women and victims of domestic violence the importance of filling the gaps in jurisdiction that continue to leave Native women and children in Alaska without adequate protection on tribal lands.

### **Tribal Access Program**

HR 1620 included a permanent authorization for the DOJ's Tribal Access Program (TAP). TAP has provided law enforcement and tribes with direct access to more effectively serve and protect their nation's citizens by ensuring the exchange of critical data across the Criminal Justice Information Services (CJIS) systems and other national crime information systems. While the program has grown tremendously during the few years of its existence, there are still challenges for Alaska tribes who often lack the necessary infrastructure to meet CJIS's requirements. In addition, we need a legislative fix that addresses the concerns of CJIS about tribal access to federal databases for Tribal governmental purposes. Currently, access may be authorized through federal statutes providing some access for certain situations to tribes and then deferring to state law to define and provide access. Tribes should be able to utilize the databases as any other governmental agency. I will first address the needs of Alaska tribes and then go into the amendments needed for all tribes.

First, Alaska tribes should be able to participate in TAP through an Intertribal structure if that is what they choose. For example, two or more participating Tribes should be authorized to participate jointly in the TAP program.<sup>25</sup> For many tribes, pooling resources or establishing inter-tribal court systems is an effective and efficient way to meet the needs of their communities. Any Tribes that want to join the pilot program and TAP as an inter-tribal consortium should be able to

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<sup>25</sup>A Tribal organization (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304)) should be able to be the designated agency for the purposes of TAP.

do so freely by meeting the general requirements and entering an MOU. The currently authorizing structure of TAP precludes most Intertribal groups, especially if the designated agency is a non-profit, that would organize together in Alaska. CJIS, the Federal Bureau of Investigations, and National Crime Information Center should be challenged to find a solution that works for the needs of Alaska Native communities and be solution oriented rather than just protecting an archaic system.

In addition, American Indian and Alaska Tribes should be able to legislate access to TAP databases to address the needs of their governments just as the federal and state governments do. We need to amend federal law to authorize the sharing of this information with tribal governments for any legitimate purpose. Federal laws allow tribes to investigate people who will work with children, but it does not allow access for people who work with our elders or vulnerable adults. Similarly, most tribes require elected officials, and key personnel to obtain background checks. A state can legislate to authorize this access; in contrast a tribe does not have direct access and often has to use channelers or use Lexis/Nexus. Many states are legislating around data entry and collection of MMIW issues. A tribe that wanted to do the same would be unable to fully implement their laws, because no general federal statute gives tribes this level of access and determination. An amendment is needed to 28 USC 534, which is an appropriations statute from the '90s that has been codified and provides the means for states to legislate the purposes for which background checks can be done. A simple fix is to amend 28 USC 534 by adding "tribal" after state and other database statutes that include "state" but leave out tribes. Also, the TAP program needs permanent funding to ensure it is not discontinued.

We strongly support the amendments to VAWA 2013 that provide for:

- access of all tribes to the TAP;
- creation of a dedicated permanent funding stream for expanding the TAP program;
- tribal access to federal databases not only to obtain criminal history information for criminal or civil law purposes, but also for entering protection orders, missing person reports, and other relevant information into the database, such as NICS disqualifying events;
- allow tribes to legislate to authorize direct access to databases for any legitimate purpose, such as data entry and collection of MMIW related issues by amending 28 USC 534 to add "tribal";
- creation of tribal technical assistance programs and regional training for tribal judges and law enforcement to access, use, input information into the NCIC and other national databases;
- creation of a multidisciplinary task force with significant tribal participation (not less than 70% ); to identify the outstanding barriers tribes face in acquiring full access to federal criminal history; and
- requiring the federal agencies responsible for these database systems to develop options for all tribes and their designated agency regardless of whether they have law enforcement or participate in the Adam Walsh Act.

## **Bureau of Prisons Pilot Project**

The Bureau of Prisons (BOP) pilot project<sup>26</sup> should be expanded and made permanent. The Tribal Law and Order Act provided for the use of the federal prisons to house inmates convicted of certain crimes with longer sentences imposed. However, by the time tribes were able to exercise the TLOA measures, the BOP pilot project was nearly over. In addition, it was limited to violent crimes and sentences greater than one year and one day. With the passage and implementation of VAWA 2013, the ITWG Tribes have raised issues and challenges around detaining SDVCJ defendants in tribal or BIA facilities using self-governance funds and providing health care for non-Indian defendants. Expanding the BOP pilot program to cover SDVCJ defendants, in addition to the other felony level crimes previously covered, would significantly help tribes in keeping their communities safe.

## **Conclusion**

Since the enactment of VAWA in 1995, each reauthorization of VAWA, has resulted in significant victories in support of the tribal authority and secured resources needed for increasing the safety of Native women across the United States. The AKNWRC strongly supports reauthorization of the Violence Against Women Act and H.R. 1620, which passed the House on March 17, 2021. Indian tribes have consistently called for the amendments and important life-saving enhancements contained in H.R. 1620. We urge the Senate Committee on Indian Affairs to support the introduction of a companion or similar bill in the Senate.

There is a unique opportunity to recognize these issues and make corrections to the laws. In Lingít Yoo X'atángi, the Tlingit Language, as with other language groups in Alaska, we had no words or description for violence within a family home. We had traditional forms of justice that kept our community in check and women valued as the life-giver of the family. We had community justice, which we are now returning to. Restoring and enhancing local, tribal governmental capacity to respond to violence against women provides greater local control, safety, accountability, and transparency. As a result, we will have safer communities and a pathway for long-lasting justice. We believe it is critical that we work together to change laws, policies, and that the federal government creates additional funding opportunities to address and eradicate the disproportionate violence against our women.

We encourage you to continue these reforms to restore the safety of Native women and all victims of domestic and sexual violence and their right to live in peace within their villages. Our tribal governments are the frontline, and we need the federal government to uphold its responsibilities to assist us in safeguarding the lives of Native people by respecting our inherent authority while also adequately funding its trust and treaty responsibilities.

Gunalchéesh! Háw'aa! Thank You!

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<sup>26</sup> 25 U.S.C. 1302 (2010).

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